

**REMARKS**

Claims 20-39 are pending in the application. By this Amendment, Claims 20 and 25 are amended. Favorable reconsideration is respectfully requested in light of the following Remarks.

1. The Office action rejects Claims 20-39 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-20 of U.S. Patent No. 6,635,344. The rejection is respectfully traversed.

By this Amendment, a Terminal Disclaimer obviating the rejection under the judicially created doctrine of obviousness-type double patenting over Claims 1-20 of the '344 patent application is attached hereto. Withdrawal of the rejection is respectfully requested.

2. The Office action rejects Claims 20-24 under 35 U.S.C. §103(a) over Berg et al. (U.S. Patent No. 5,891,937, hereinafter "Berg") in view of Peiffer (U.S. Patent No. 5,064,407, hereinafter "Peiffer"). The rejection is respectfully traversed.

Independent Claim 20 specifies, *inter alia*, an absorbent material of odoriferous substances from the environment comprising a carrier formed by particles consisting of a woody ring and a chaff ring of a corncob having a moisture content below 10%.

Berg appears to disclose an absorbent agriculture residue product formed by reducing the size of the residue material, adding adhesive, and consolidating to form panels or other shapes. *See Abstract*. The residue material is made from corn stalks, husks, cobs and kernels. The size of the particles of the residue material range from particles that pass through a number 2 screen to those that are retained by a number 150 screen, i.e., particles that are 2 inches in size or smaller. *See col. 2, lines 27-33; col. 3, lines 3-9*. Very small particles are not utilized in the residue material. *See col. 2, lines 35-37*. The moisture content of the residue material is less than about 10%. *See col. 3, lines 14-18*.

Peiffer appears to disclose an absorbent cellulose product formed by using the chaff, pith and woody ring of the corncob that is reduced, palletized, crumbled and classified to produce a granular product. *See Abstract*. Specifically, the corncob components comprise 91-96% chaff, 1-4% pith and 3-5% woody ring. *See col. 2, lines 39-42*. (Emphasis Added.)

The Office action asserts that it would have been obvious for one of ordinary skill in the art to employ the proportions of corn residue weight taught by Peiffer in the absorbent material taught by Berg to meet the claimed invention. Applicant respectfully disagrees with this assertion.

Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. A reference is reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, if it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.<sup>1</sup>

It appears that Berg is not analogous art. Specifically, Berg is directed to the use of a corn residue comprised of processed and classified stalk material that is mixed with an adhesive to form mats, which in turn are consolidated to form panels or environmentally safe nursery pots. *See col. 1, lines 11-18; col. 2, lines 14-46.* Other products formed by the consolidated mats include fuel briquettes, durable panels for construction, paper, substrate for imbedding wildlife food and botanical bedding material. *See col. 2, lines 52-56.*

By contrast, the present invention is directed to the problem of removing unwanted malodor and acting as a carrier of fragrances, aromas and other active ingredients that are gradually released by the carrier to the surrounding air. Thus, Berg is not analogous art because Berg is not in the field of Applicant's endeavor, and the inventor would have had less motivation or occasion to consider the teachings of Berg to solve the problem of the present invention.

Even if Berg is analogous art, there is no teaching or suggestion in the references to support the combination of Berg and Peiffer. It is well-settled that obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103,

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<sup>1</sup> *In re Clay*, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992).

teachings of references can be combined only if there is some suggestion or incentive to do so. It is respectfully submitted that the applied art fails to provide any such suggestion or incentive.<sup>2</sup>

Even if the combination of Berg and Peiffer is proper, the combined references do not teach or suggest all the claim limitations, as recited in Claim 20. Specifically, there is no teaching or suggestion of at least the feature of an absorbent material of odoriferous substances from the environment comprising a carrier formed by particles consisting of a woody ring and a chaff ring of a corncob having a moisture content below 10%. (Emphasis Added). By contrast, Peiffer teaches corncob components comprising chaff, pith and woody ring, not just chaff and woody ring as recited in Claim 20.

In view of the foregoing, it is respectfully submitted that the Office action fails to establish a *prima facie* case of obviousness. *See MPEP §2143*.

For at least this reason, it is respectfully submitted that Claim 20 is allowable over the applied art. Claims 21-24, which depend from Claim 20, are likewise allowable over the applied art. Withdrawal of the rejection is respectfully requested.

3. The Office Action rejects Claims 25-39 under 35 USC 103(a) over Berg in view of Peiffer, and further in view of Dickey (U.S. Patent No. 4,519,340, hereinafter “Dickey”). The rejection is respectfully traversed.

Dickey appears to disclose an absorbent composition for animal excreta made from dried, chopped corn stalks mixed with lime and an organic material having a density greater than the corn stalks. *See Abstract*. Thus, Dickey adds nothing to overcome the shortcomings of Berg and Peiffer stated above.

For at least this reason, Claims 25-39 are allowable over the applied art, taken singly or in combination. Withdrawal of the rejection is respectfully requested.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance of the application is earnestly solicited.

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<sup>2</sup> *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 221 USPQ 929, 932, 933 (Fed. Cir. 1984).

**Attorney Docket No.: 209406-84004 (formerly 65072-0149)**

Should Examiner Le believe anything further would be desirable in order to place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

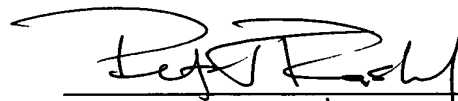
It is believed that any additional fees due with respect to this paper have already been identified. However, if any additional fees are required in connection with the filing of this paper, permission is given to charge account number 50-3145 in the name of Honigman Miller Schwartz and Cohn LLP.

Respectfully submitted,

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**SIGNATURE OF PRACTITIONER**

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